

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-215663

DATE: September 18, 1984

MATTER OF: Schoutten Construction Company

DIGEST:

Where mistake in bid is alleged prior to award and the bidder presents clear and convincing evidence of the mistake, the manner in which it occurred, and of the bid actually intended by submitting worksheets and a statement showing the mistake resulted from improper addition in calculating a subtotal, and the bid as corrected remains low, there is a reasonable basis for the agency determination to allow bid correction to reflect the intended bid.

Schoutten Construction Company (Schoutten) protests the decision by the Department of Transportation, Federal Aviation Administration (FAA), to permit Sturm Craft Co., Inc. (SCC), to correct a mistake in its low bid under invitation for bids No. DTFall-84-B-0029 for the construction of an approach lighting system with sequenced flashers at Stapleton International Airport.

We find the protest without merit.

Five bids were received at bid opening on June 7, 1984, at 2 p.m. SCC's bid of \$141,000 (consisting of an original bid of \$127,000 as modified by a mailgram sent on June 5 increasing its bid by \$14,000) was low. Schoutten's bid of \$166,199 was next low. Shortly after bid opening, an SCC official called the contracting officer and advised that the SCC bid contained a mathematical error and the intended bid price was \$163,000. The representative also advised the contracting officer that a second mailgram had been sent before bid opening advising FAA that SCC desired to so increase its bid. The contracting officer requested SCC to submit documentation supporting the alleged mistake. On June 8, the second mailgram, directing the agency to disregard SCC's first mailgram and increase the original bid (\$127,000) by \$36,000, was received by FAA. The FAA determined that this mailgram was a late modification which could not be considered under Federal

Acquisition Regulation (FAR) § 52.214-7, 48 Fed. Reg. 41,102, 42,498 (1983) (to be codified at 48 C.F.R. § 52.214-7).

On June 15, 1984, the FAA received SCC's worksheets accompanied by a letter explaining that the mistake consisted of an addition error on the first of four pages, which was compounded by the application of overhead, profit and bond percentage add-ons applied to the mistaken cost total. SCC also submitted a page showing the page totals with the addition error on the first page corrected, to which are applied the same percentage add-ons resulting in a price of \$163,000.

The agency determined to permit SCC to correct its bid since no other bidder was displaced by correction and SCC's documentation adequately established the existence of the mistake in addition on page one, the mathematical manner in which it was made, and the intended bid based on correction of the addition error and application of the indicated percentage add-on factors. The agency determined that, while the second mailgram was unacceptable as a late bid modification, it did serve to support SCC's claim of mistake. Award at a price of \$163,000 was made to SCC on June 27, 1984. Schoutten protested to our Office on June 29, 1984.

Schoutten alleges that the correction is improper because, in reality, it permits SCC to effect an improper late modification of its bid. Schoutten also asserts that the letter and worksheets submitted by SCC and relied on by FAA as evidence are insufficient to meet the requirements of FAR, § 14.406-3(g)(2), 48 Fed. Reg. 41,102, 42,181 (1983) (to be codified at 48 C.F.R. § 14.406-3(g)(2)). In particular, Schoutten points out that the worksheets are undated and in pencil, and there is no sworn statement by the bidder. Schoutten alleges that the contracting officer did not authenticate the worksheets or ascertain the validity of how the mistake in addition occurred. Schoutten also points out that the worksheets and letter were not received by FAA until a week after the telephone call from SCC alleging mistake. Finally, Schoutten points out that the corrected bid is too close to the next low bid and, therefore, correction should not be permitted since it tends to undermine public confidence in the integrity of the competitive bidding system.

A bidder who seeks correction of an error in his bid alleged prior to award must submit clear and convincing evidence showing that a mistake was made, the manner in which the mistake occurred, and the intended price. The closer an intended bid is to the next low bid, the more difficult it is to establish that it is the bid actually intended and, for that reason, correction is often disallowed when a corrected bid would come too close to the next low bid. Since the authority to correct mistakes alleged after bid opening but prior to award is vested in the procuring agency, and because the weight to be given to the evidence in support of an asserted mistake is a question of fact, we will not disturb an agency's determination unless there is no reasonable basis for the decision. Harry Curley & Sons, B-213749, Feb. 28, 1984, 84-1 C.P.D. ¶ 249.

Schoutten's specific legal argument is based primarily on Franco, B-214124, May 1, 1984, 84-1 C.P.D. ¶ 488. In Franco, we noted the general proposition that worksheets may constitute clear and convincing evidence if they are in good order and indicate the intended bid price and there is no contravening evidence. However, we went on to review the worksheets in question and concluded that the low bidder's worksheets and statements revealed significant and substantially unexplained discrepancies and uncertainties. In particular, in addition to specific internal calculation discrepancies, we found that the worksheets contained no entry for general, unallocated overhead, or for profit, and concluded that the apparent failure to provide for these customary items in the calculations used to arrive at the intended bid price called into question the validity of that figure. As a result of these discrepancies and uncertainties, we concluded that the agency had improperly permitted correction without a reasonable basis.

In this case, there are no such discrepancies or uncertainties. Schoutten has questioned the order or sequence of the prices on SCC's worksheets in relation to the project requirements and has pointed out that the worksheets appear to be only a breakdown for electrical parts without any indication of labor prices. However, these are the bidder's internal documents and we do not believe that it is appropriate to question the precise methodology by which a bidder undertakes to calculate its bid. Rather, our concern is whether the worksheets provide

a reasonable basis for the agency's conclusion that there is clear evidence of the existence of a mistake and of the intended bid. Franco, B-214124, supra.

Here, the worksheets show that SCC arrived at four separate subtotals for the work in question, each contained on a separate page. On the fourth page, SCC recapitulates the four subtotals and adds them to show a cost total of \$110,141. To this total, SCC next shows the addition of an amount equal to 15 percent (explained in SCC's letter as its overhead rate) to arrive at a figure of \$126,662.15. Next, SCC has added an amount equal to 10 percent (explained in SCC's letter as its profit rate) to arrive at a figure of \$139,320.37. Next SCC has added an amount equal to 1.2 percent (explained in SCC's letter as its bid bond rate) to arrive at a grand total on page four of \$141,000.31, with an indication to round off to \$141,000. All of these figures reflect the inclusion of \$38,686 as the subtotal for page one when, in fact, the correct subtotal for the figures on page one is \$55,871. On a fifth page, SCC has shown the identical sequence of calculations substituting the correct \$55,871 figure for page one, which results in a grand total of \$163,000.19, which is rounded off to an intended bid of \$163,000. (We note that FAA apparently failed to check this total since it includes an error in addition of the page subtotals of \$40 which, when carried through, would result in an actual final total of \$162,948.99. However, particularly in view of the rounding off of SCC's final bid total, we view this error as inconsequential. See George C. Martin, Inc., B-187638, Jan. 19, 1977, 77-1 C.P.D. ¶ 39.)

Under these circumstances, we cannot say that FAA's determination to permit correction was without any reasonable basis. With respect to Schoutten's argument regarding acceptance of a late modification, we agree that the second SCC mailgram by itself would constitute such an unacceptable modification. FAA did not accept this modification. Rather, it determined specifically that to do so would be improper. However, the FAA reasonably concluded that the unacceptable modification telegram provided some substantiating evidence that a mistake had been made by SCC in preparing its bid.

As to the fact that 1 week elapsed between the notification of mistake and the letter providing the documentation, we have held that a 1 week period for review

by a bidder is reasonable. Butler Corporation, B-212497, Oct. 31, 1983, 83-2 C.P.D. ¶ 518; Porta-Kamp Manufacturing Company, Inc., 54 Comp. Gen. 545 (1974), 74-2 C.P.D. ¶ 393.

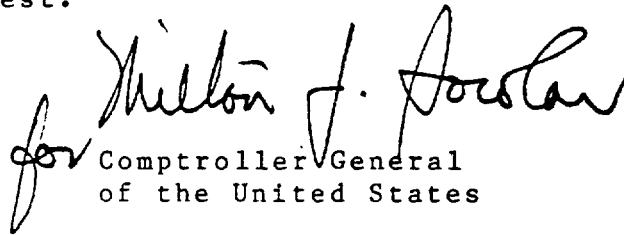
Regarding the closeness of the corrected bid to the next low bid, first we note that it is not within less than 1 percent as alleged by Schoutten; it is actually within approximately 1.9 percent. In any event, under appropriate circumstances, where the evidence was sufficiently clear and convincing, we have permitted correction to within less than 1.9 percent of the next low bid. George C. Martin, Inc., B-187638, *supra*; North Star Electric Contracting Corporation et al., B-187384, Jan. 28, 1977, 77-1 C.P.D. ¶ 73. We believe that this case falls within the ambit of these decisions.

With respect to the allegation that SCC has failed to explain its error as required, this is contradicted by the record. The bidder states, and the worksheets confirm, that the figures on page one were incorrectly added resulting in an incorrect subtotal. This incorrect subtotal was used in calculating the total cost, which in turn was used to calculate the percentage add-ons to arrive at the final bid. If the correct first-page subtotal is substituted and the identical calculations are made, the intended bid of \$163,000 becomes apparent.

Finally, Schoutten has, in essence, questioned the bona fides of the worksheets and has pointed out in this regard that they are not accompanied by a sworn statement as required under FAR § 14-406.3(g)(2), 48 Fed. Reg. 42,181. This section of the FAR provides that correction requests "must be supported by statements (sworn statements if possible) and shall include all pertinent evidence such as . . . original worksheets." First, we point out that we have found that the penalties prescribed by 18 U.S.C. § 1001 (1982) could apply to false statements or representations by a bidder. D. L. Draper Associates, B-213177, Dec. 9, 1983, 83-2 C.P.D. ¶ 662. In part because of this statutory protection, we have sanctioned the use of handwritten and computer printout worksheets which are readily susceptible to tampering. D. L. Draper, B-213177, *supra*. Moreover, we have explicitly accepted the agency consideration of handwritten worksheets which contained numerous erasures. 51 Comp. Gen. 503, 505 (1972). Schoutten's misgivings about the bona fide nature of the

alleged mistake and the worksheets were not shared by the contracting officer. Nor do we find that they are supported by the record which appears to reflect only a rather elementary error in mathematics. Accordingly, we find that the protester has failed to meet its burden of affirmatively proving its case in this respect. Grandville Electric, Inc., B-213406, Feb. 22, 1984, 84-1 C.P.D. ¶ 222.

We deny the protest.


for Comptroller General
of the United States